IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7912 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VITHALBHAI G PATEL & 1 - Petitioner(s)
Versus
MOHANBHAI R BHAMBHAI & 3 - Respondent(s)

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Appearance :
MR JV JAPEE for Petitioner(s) : 1 - 2.
MS MOKSHA THAKKER FOR MR NK MAJMUDAR for Respondent(s) : 1,
MR LR PUJARI AGP for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/03/2007

ORAL JUDGMENT

1. Mr.J.V. Jappee, learned counsel for the petitioners, Ms.Moksha Tahakker, learned counsel for the respondent No.1 and Mr.L.R. Pujari, learned Assistant Government Pleader for the respondent Nos.2 to 4.

2. Short facts necessary for disposal of the writ application are

that according to the allegations of the petitioners, their father was possessed of certain properties which were in the tenure of Jahangirdar, the property was settled in favour of their father. However, the Collector passed an order directing resumption of the land on the ground that the land remained fallow for a period of three years. Even after the said order, the petitioners continued to be in possession of the property. Later-on, order settling the land in favour of petitioners' father, was set aside and the land was settled in favour of respondent No.1. The said order came to be challenged by the petitioners before the Collector, who allowed the appeal filed by the petitioners and restored the order of settlement in favour of petitioners' father.

3. The order passed by the Collector was challenged by the respondent No.1 before the Deputy Secretary (Appeals), Revenue Department. During the pendency of the matter, respondent No.1 (applicant before the Dy.Secretary) made an application to withdraw the revision application on the ground that the matter had been settled between the parties and the said applicant (respondent herein) was not pressing the revision petition. It appears that during the course of the arguments, the learned Dy.Secretary inquired from the parties that what were the terms of the compromise, but the parties could not satisfy the authority that what were the terms of the compromise. The Dy.Secretary heard the parties,

rejected the withdrawal application and also allowed the revision application filed by the present respondent. Being aggrieved by the said order, the petitioners are before this Court.

4. Various contentions have been raised by Mr.Japee, learned counsel for the petitioners in support of the writ petition. He has submitted that if the authority was not granting permission to withdraw the revision petition, even at the request of the respondent no.1, then it could not force the party to contest the litigation. According to him, the revision at the instance of the said party could not be continued when the party was unwilling and if the authority wanted to interfere then it could have exercised its suo-motu powers, that too, after giving appropriate opportunity to the petitioners.

5. Ms.Moksha Thakker learned counsel for the respondent No.2 simply says that the respondent No.1 had filed the application for withdrawal as he was not interested in prosecuting the litigation.

6. Mr.L.R. Pujari, learned Assistant Government Pleader for the State submits that on the date, the land was settled in favour of father of the petitioners, the petitioners' father was possessed of other land and under the provisions of law, the land could not be settled in favour of petitioners' father. His submission is that if any illegality was brought to the notice of

the authority and the authority wanted to correct it, then, the authority was justified in not permitting the original applicant to withdraw the revision petition.

7. After hearing the parties, I must hold that the rejection of the application filed by the respondent No.1 was illegal. Under the law, a party cannot be compelled to continue with the litigation, even if the terms of the compromise were not disclosed before the revisional authority, then too, the revisional authority could not reject the application. If for any other reason, the authority was of the opinion that the order passed by the Collector was to be revised, then, the authority could exercise its suo-motu powers after giving proper notice to the parties. In the present case, the authority did not observe the law in its true sense.

8. For this short reasons, the order passed by the Dy.Secretary deserves to and is accordingly quashed. The authority, however, would be entitled to take appropriate steps if they still desire to revise the order passed by the Collector in favour of the present petitioners. The petition is allowed. Rule is made absolute. No order as to costs.

(R.S. GARG, J.)

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